

STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION MEETING
FRAUD DIVISION HEADQUARTERS
SACRAMENTO, CALIFORNIA
JANUARY 18, 2006

Attendees: William Zachry, Chairperson, and Commission Members Donna Gallagher, Gary Canepa, George Fenimore, Carol Schatz and Chuck Center.

Others present: Dale Banda, Deputy Commissioner, Enforcement Branch, and Rick Plein, Fraud Division Bureau Chief, Workers' Compensation and Gene S. Woo, Senior Staff Counsel, CDI Legal Division.

Chairperson Zachry called the meeting to order.

Motion

The first order of business is the approval of the October 2005 meeting minutes. Commissioner Fenimore made the motion to approve. Commissioner Gallagher seconded the motion.

Action

The meeting minutes were unanimously approved.

Chairperson Zachry raised the issue of the 3700.5 fines. Deputy Commission Banda reported that a letter had been sent to the Division of Customer Relations indicating the state agreed that 3700.5 fines were to go directly into the Workers' Compensation Fraud Account within the Insurance Fund and not the Uninsured Employers Fund.

Chairperson Zachry remarked that regulations are being reviewed and the 5% Reserve process is being eliminated. The 5% requires extra work for the department, district attorneys and the Commission without much of an improved process overall. "These reserved funds are intended to offset unanticipated costs of prosecution of cases involving workers' compensation fraud, and shall be distributed in January at the end of year following the regular annual grant award, pursuant to section 2698.53C as augmentation funding," stated Zachry. "So, that is the criteria that we're going to use in terms of allocating the five percent", noted Zachry.

District Attorneys:

Riverside

Paul Fick, Senior Deputy District Attorney, reported on the need for unanticipated costs for the Mowbray case. One of the defendants, James Williams, thought that Richard and Denise Mowbray were going to accuse him of embezzlement. Mr. Williams decided if he was going down, so were they. Mr. Williams laid out the whole fraud scheme detailing the three separate payrolls being utilized. The bottom line is Riverside County

now has four and a half years worth of evidence; thirty-two thousand plus checks, and two hundred twenty boxes of evidence. In order to capture a financial analysis accurately and efficiently, the district attorney's office needs the expertise of a forensic accountant. This case can be documented now for \$3.45 million, but we anticipate this case to be in excess of seven million dollars. We need to be able to document that to the judge so we can order the full amount of restitution.

Amador

Vernon Pierson, Chief Assistant District Attorney, Amador County, reported on the regional expansion covering Calaveras County and Placer County. We have two cases in Placer and one of those is a CHP case. Amador is working closely with CHP Internal Affairs.

Additionally, Amador is working a provider case and continues to work with the Department of Corrections and their Internal Affairs. Finally, Amador is reworking the Workers' Compensation educational video, "Truth or Consequences". The approximate cost will be nine thousand dollars.

Contra Costa

Ed Dang, Deputy District Attorney, Contra Costa County, noted the need for unanticipated costs arose from a joint operation with the Fraud Division. Additionally, the Workers' Compensation Fraud Unit was reduced and he is the only grant funded district attorney.

Kern

Michael Yraceburn, Supervising Deputy District Attorney, Kern County, remarked he was asking for reimbursement of \$8,500 in litigation costs. The issue we addressed in this case was how the services provided were being categorized for billing purposes.

Los Angeles

Lance Wong, Head Deputy District Attorney, stated Los Angeles was continuing to receive new cases with fifty-seven cases filed in the first six months of this fiscal year. Currently, L.A. has a twenty-five case ratio for each deputy district attorney. Last June, the program funding was reduced and L.A. lost three attorneys, three full-time investigators, two part-time investigators, and two support staff members. This reduced resources by one-third.

Now L.A. has two large premium fraud investigations that require assistance. One case is in excess of \$7 million.

Commissioner Gallagher indicated there are six months remaining in the fiscal year. "Is it realistic to assume that those two D.A.'s will be consumed full-time on those two cases and two full-time investigators?" Basically, L.A. will need two to four months funding for salaries. Head Deputy District Attorney Wong acknowledged that there would be salary savings.

Merced

Mark Bacciarini, Deputy District Attorney, Merced County, reported on the developments of the double Helix Grand Jury Indictment. Currently, this case involves six to twenty defendants set for grand jury. The district attorney staff consists of Mr. Bacciarini at 35%, one investigator and a paralegal. Based on the unexpected workload, the county is requesting extra clerical staff to assist with the volume of discovery and the demands of defense attorneys.

Sacramento

Deputy District Attorney Debbie Lynn substituted for the program contact Deputy District Ritschard, as he is beginning a preliminary hearing on a major case. The Commission has received a confidential document that describes the unanticipated costs involved in an investigative grand jury. These upcoming costs are the basis for Sacramento's 5% reserve funding request.

San Diego

Deputy District Attorney Dominic Dugo remarked that San Diego has a Premium Fraud Task Force and a Medical and Legal Insurance Fraud Task force and several large cases. For purposes of the 5% Reserve request, Mr. Dugo focused on one premium fraud case which involves denial of workers' comp benefits. "It's the largest case that we've ever handled in San Diego," stated Dugo. Fifteen search warrants were served in three counties throughout southern California. The case involves thirty suspects and has generated a tremendous amount of paperwork and workload.

San Diego has researched having a scanning company estimate the cost to scan all paperwork for them. There are approximately three million pages of documents from open and closed cases to be scanned into the database. San Diego staff did a thirty day trial run and the statistical result is forty-two cents per page or about \$1.2 million to complete the project in-house. The company quoted six cents per page totaling one hundred eighty thousand dollars. Basically, the cost is thirteen thousand to fourteen thousand a year to store records, versus a one-time cost of one hundred eighty thousand.

San Mateo

Elaine Tipton, Deputy District Attorney, San Mateo County, distributed revisions to the submitted application clarifying a few dollar questions and content questions. San Mateo continues to operate with 65% of one deputy district attorney, 65% of two investigators and 65% of a paralegal. The need for additional funding arose with the unanticipated costs of two lengthy jury trials. One case alone generated sixty-five hundred dollars in witness fees. San Mateo prosecuted a police dispatcher and this case was difficult as the accused had law enforcement character witnesses testify on her behalf. Furthermore, the injuries and the medical issues were complex necessitating numerous expert witnesses.

The second trial has pending bills, not yet received, from four medical experts who testified. San Mateo is already at a five thousand dollar deficit in the expert witness fund. Therefore, a portion of the 5% reserve funding request is for ten thousand dollars to address both the deficit and the projected expenses.

Santa Barbara

John MacKinnon, Deputy District Attorney, Santa Barbara County, remarked that there was nothing to add to the proposal submitted, but he was open for questions.

Santa Clara

Steve Gibbons, Assistant District Attorney, introduced Scott Tsui, Supervising Deputy District Attorney and Lieutenant Mark Hatcher in charge of the Insurance Grant Unit. Additionally, Mr. Gibbons recognized Chief Investigator Laurel Robinson, Morgan Hill Fraud Division Office, for doing a great job. We just finished litigating the Castle Rock Construction case. This case went to trial six months from discovery and was over a million dollars in premium fraud. The case will come up for sentencing in early March.

Santa Clara has done outreach in the community with the unions. They now have two cases from the Sheet Metal Workers Union, involving prevailing wages. Also, from their involvement with the Underground Economy Task Force, EDD gave Santa Clara a transportation company case, with some three million dollars in estimated cash wages.

This additional funding would pay for a forensic accountant. Santa Clara's React Task Force has a contract with a former IRS agent and that's an option being considered. Discussion ensued on the most cost effective way to assist with these large premium fraud cases.

Santa Cruz

Michael Roe, Chief Investigator for Santa Cruz County, remarked that he has been charged with revitalizing the program. In the last seven months, Santa Cruz increased their activity by 300%. Through outreach efforts with labor representatives and major employers in the county, we anticipate receiving some cases. The county teamed up with the Contractors Licensing Board and did a couple of stings on unlicensed contractors that did not carry insurance.

Commission member Gallagher raised the issue that the budget submitted seemed to represent one full year and not six months. At the end of the presentations, Mr. Roe will provide whether the budget reflected six-months or one full year.

Stanislaus

Maribeth Arendt, Deputy District Attorney, Stanislaus County, reported the 5% funding request would stand as submitted, but if there were any questions, she would be pleased to respond.

Commissioner Gallagher raised the issue as to what equipment purchase was critical. There are two large cases headed to trial and two laptops (one for trial and one for outreach) are important. Also, the projector for PowerPoint presentations in the courtroom is very important.

Ventura

Thomas Frye, Deputy District Attorney, Ventura County, reported that the primary focus for their request is to handle the case, "The People V Pollac".. This case is pending preliminary hearing and charges have already been filed.

Tulare, Kings, Fresno, Kern, and Merced

Bill Yoshimoto, Supervising Deputy District Attorney, Tulare County, presented the FAC with the overall situation in the Central Valley. Farming has grown in the valley and the "old" way of doing business caused a serious economic loss to the farmers. Today, farmers hire labor contractors to do all the paperwork, pay the insurance and hire the crews for harvest. Unfortunately, many of these contracting businesses are involved in premium fraud. Since August 2005, the Fraud Division has submitted fifty-one new premium fraud cases to the Central Valley for prosecution.

Mark Voss, Chief Investigator, Fresno Regional Office remarked that since 2003, Fresno Regional Office has received one hundred fifty premium fraud case referrals. We are seeing dollar losses from \$250,000 to one million and above in these cases. While the district attorneys and Fraud Division work jointly, this is an opportunity to work in a coordinated effort to really address the problem. Bureau Chief Ingram echoed those remarks and noted now that the crime problem has been clearly identified in these five counties within the Central Region, he is ready to fully support and aggressively address the situation in a coordinated effort with the district attorneys.

Mike Yraceburn, Supervising Deputy District Attorney, Kern County, commented that as they begin to organize the Premium Fraud Task Force in the Central Valley, one important component is a forensic accountant. Kern County's funding request is to cover that factor.

Edith Treviso, Senior Deputy District Attorney, Fresno County expressed that Fresno had also requested a forensic auditor. Currently, Fresno utilizes a forensic auditor on a contract basis who is devoted to a specific major fraud case.

Commission member Chuck Center commented that he liked the concept and thought it would be a good idea to do an outreach to local farm bureaus.

Chief Deputy District Attorney Shane Burns, Kings County reported that after reviewing the numbers, the county had inadvertently requested funding for a full year instead of six months for at least half an attorney. Commission member Gallagher remarked that the funding request would be \$28,695.

Larry Morse, Chief Deputy District Attorney, Merced County commented that there was no funding request at this time. Chief Deputy Morse reported that several cases were being worked and Merced would request funds at the next funding cycle. He further described the importance of having experts testify in court and the credibility that experts brought to the jury. Also, as the Central Valley develops their premium fraud regional task force, experts such as forensic accountants will be an important component.

Commission member Schatz congratulated the counties on this innovative approach. Additionally, other counties may wish to consider this type of initiative if applicable noted Schatz.

Public Comment

Laura Clifford, Employer's Fraud Task Force, addressed the FAC regarding the upcoming conference to be held January 30, 2006 in Sacramento. The conference is entitled "Forces Joining Forces Combating Workers' Comp Fraud" and special guests include Insurance Commissioner John Garamendi, Fraud Assessment Commission Chair, Bill Zachry and David O'Brien, retired Workers' Comp judge.

With no additional public comments, the FAC moved to the funding recommendation process for the district attorneys.

Commission member Gallagher facilitated the process by announcing her funding recommendations for each county and criteria she used to formulate her decision. The funding chart was displayed for everyone to view. One by one, each of the FAC members gave their funding recommendations and department staff inserted the data for everyone to see.

Motion

After much discussion, Commission member Schatz moved to accept Commission member Gallagher's funding recommendations. The funding recommendations were:

Amador	\$ 45,459
Contra Costa	\$ 39,587
Kern	\$ 48,879
Los Angeles	\$520,598
Mendocino	\$ 10,190
Merced	\$ 46,889
Riverside	\$ 45,000
Sacramento	\$ 27,500
San Diego	\$0
San Mateo	\$ 23,145
Santa Barbara	\$ 9,156
Santa Clara	\$ 58,333
Santa Cruz	\$ 33,796
Siskiyou	\$0
Stanislaus	\$ 8,963
Tulare	\$ 46,230
Kings	\$ 28,695
Fresno	\$ 49,650
Ventura	\$ 23,123

The motion was seconded by Commission member Fenimore.

Action

All in favor.

Chairperson Zachry:	Aye
Commission Member Schatz	Aye
Commission Member Center	Aye
Commission Member Fenimore	Aye
Commission Member Gallagher	Aye
Commission Member Canepa	No

The motion passed.

Chairperson Zachry raised the issue of timelines for upcoming meetings. The Request-for-Applications will be distributed the first week of March 2006 and on March 23, 2006, the department will hold the annual District Attorney Informational Meeting for all Enforcement Branch programs. The Workers' Compensation applications are due to the department on May 1, 2006. The department will hold the annual Review Panel on June 6, 2006 and forward the district attorney funding recommendations to the Insurance Commissioner for final determination.

Also, during this time, the Request for Proposal (RFP) on the project "Workers' Compensation Medical Payment Accuracy Study," will have been distributed. On June 16, 2006 the cost proposals are scheduled for opening. Participating in the openings is California Commission on Health and Safety staff and Executive Officer, Fraud Assessment Commission Chair and member, Donna Gallagher and the Fraud Division Bureau Chief, Rick Plein.

Chairperson Zachry remarked that immediately following this timeline, the Fraud Assessment Commission will meet on June 20, 2006 to take action on the RFP cost proposal and give advise and consent to the distribution of funding for district attorneys.

The FAC then reviewed individual calendars and determined that the aggregate funding meeting would be held on November 29, 2006.

Commission member Gallagher requested an agenda item for the June 20, 2006 meeting. The FAC needs to discuss outreach deterrents and press releases and depending on the outcome of the discussion - a possible motion. Furthermore, stated Gallagher, "Investigative costs can be rather substantial to carriers, or employers, or self-insured employers, third party administrators. There appears to be a conflict between insurance code 1871.4 (b), which gives the Court discretion to award investigative costs as part of restitution, and Penal Code Sections 1202.4 (f) and 1202.4 (f) 3E, which require the Court to order full restitution of all economic costs."

Deputy Commissioner Banda offered to have the department's legal staff research and also bring forward this issue to the California Insurance Association.

The meeting was adjourned at 2:30 p.m.